

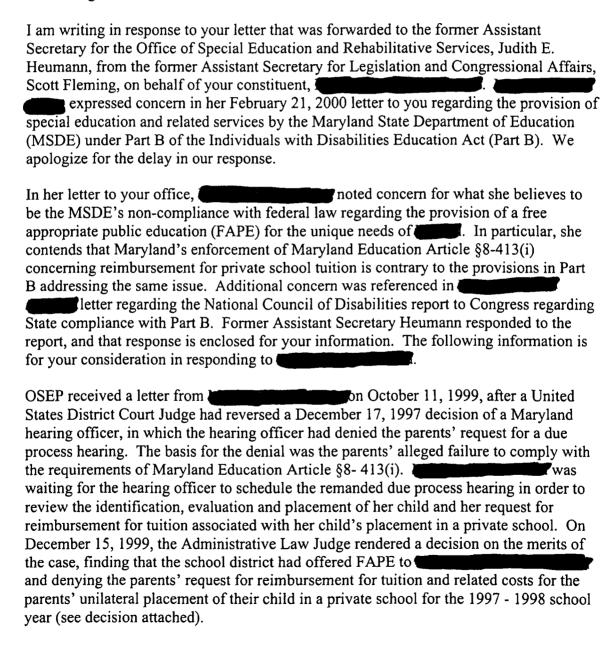
UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

APR | 6 2001

Honorable Wayne T. Gilchrest Member, House of Representatives 44 Calvert Street, Suite 320 Annapolis, Maryland 21401

Dear Congressman Gilchrest:



400 MARYLAND AVE , S.W. WASHINGTON, D C. 20202

After consulting with process legal counsel, Mr. Michael F. Slade of my staff telephoned for the staff telephoned for the

also contends in her letter to you that Maryland Education Article §8-413(i) denies parents a timely due process hearing, contrary to the requirements of Part B. Section 8-413(i) addresses reimbursement for private school tuition and costs. It provides:

If the parent or guardian of a student with disabilities, eligible to receive special education and related services from a county board, enrolls the child in a nonpublic school, the county board is not required to reimburse the parent or guardian for tuition or related costs associated with the enrollment if:

- (1) The parent or guardian does not provide to the county board prior written notice rejecting the program proposed by the county board, including the reason for the rejection, and stating an intention to enroll the student in a nonpublic school;
- (2) The nonpublic school placement of the student is found inappropriate; or
- (3) The proposed county board program is found appropriate.

Part B of the IDEA addresses limitations on the reimbursement for private school tuition and costs at 34 CFR § 300.403(d), which provides:

- (d) The cost of reimbursement described in paragraph (c) of this section may be reduced or denied--
 - (1) If--
 - (i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

- (ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;
- (2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for evaluation; or
- (3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.
- (e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement may not be reduced or denied for failure to provide notice if--
 - (1) The parent is illiterate and cannot write English;
 - (2) Compliance with paragraph (d)(1) of this section would likely result in physical or serious emotional harm to the child;
 - (3) The school prevented the parent from providing the notice; or
 - (4) The parents had not received notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (d)(1) of this section.

OSEP is aware of Maryland's Education Article §8-413(i) and shares concern that the statute may not use language concerning limitations to reimbursement for private school tuition and the exceptions to those limitations consistent with 34 CFR §300.403(d) and (e). OSEP has raised this issue with the Maryland State Department of Education in the course of OSEP's review of the State's statutes, regulations, policies and procedures to determine Maryland's eligibility to receive a grant under Part B of the IDEA. See 34 CFR §§ 300.110 and 300.133. OSEP will continue to work with the MSDE to ensure that Maryland's statutes, regulations, policies and procedures meet all requirements of the IDEA in order for the State to receive its Part B funding.

In your March 8, 2000 letter, you also inquired after a complaint had filed with the U.S. Department of Education's Office for Civil Rights (OCR). OSEP has contacted OCR to ascertain the status of complaint. Subsequent to an April 27, 2000, letter from OCR informing you that the complaint had yet to be resolved, OCR issued a decision on July 27, 2000, closing its file on the complaint with a finding of no Section 504 violation. On September 29, 2000, OCR issued another letter to decision and finding no evidence to cause OCR to alter its original determination.

OCR noted, as we confirm herein, that the issue to be resolved is the compliance of Maryland Education Article §8-413(i) with IDEA, not Section 504. Copies of the two OCR letters referenced above are enclosed. If you have any questions related to OCR's decision on the compliance of the Office feel free to contact Wendella P. Fox, Director in the Philadelphia Office of the Office for Civil Rights, at (215) 656-8541.

I hope this information is helpful to you in responding to the state of the contact me of any further assistance regarding this matter please feel free to contact me or Michael F. Slade at (202) 205-8969.

Sincerely,

Patricia J. Guard Acting Director

Office of Special Education

Patricia J. Suar

Programs

cc: Nancy Grasmick, Superintendent of Schools, MSDE

Enclosures: Part B regulations published March 12, 1999

Statement on NCD Report by Assistant Secretary of Education

Maryland Office of Administrative Hearings Decision Re:

Letter from OCR to July 27, 2000

Letter from OCR to September 29, 2000